APPENDIX E

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY PART 22

PETER SUDARSKY, ET ANO

v. INDEX NO. 29446/92

THE CITY OF NEW YORK, ET AL

MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR LEAVE TO FILE LATE NOTICE OF CLAIM

ENTERED APR. 14, 1994
COUNTY CLERK'S OFFICE NEW YORK

Upon the foregoing papers it is ordered that this motion by defendants for an order pursuant to CPSR para. 3212, seeking summary judgment is granted. Plaintiff's cross-motion for an order seeking leave to file a late notice of claim is denied.

From a reading of the papers it appears that the allegations submitted by the plaintiffs, in opposition to the summary judgment motion in this action, are similar to those submitted by plaintiffs for this same action in federal court. In granting defendants summary judgment in the federal action, the Honorable Robert J. Ward determined that the factual allegations made by plaintiffs in opposition to defendants' motion did not raise any material issue of fact necessitating a trial and that defendants were entitled to judgment as a matter of law. Sudarsky v. City of New York, 779 F. Supp 287 (S.D.N.Y. 1991). Therefore, the doctrines of collateral estoppel and res judicata prevent plaintiffs from relitigating the same issues of the same case.

As a result of the decision above, plaintiffs' cross-motion for leave to file late notice of claim is preempted, making the issue a moot point. Further, plaintiffs have already picked their forum and their case has already been decided. Thus, no notice of claim is required.

dated 3/22/94 Salvador Collazo s